

IV. REMARKS

Status of the Claims

Claims 1,9,10,16,17,18, and 19 are amended. Claims 19 are presented for further consideration.

Summary of the Office Action

Claims 1,6,-9, and 15-19 stand rejected under 35USC102(e) on the basis of the cited reference Altshul et al, U.S. Patent No. 6,144,847. Claims 2-4 stand rejected under 35USC103 on the basis of the cited reference Altshul in view of the cited reference McGregor, U.S. Patent No. 5,625,669. The Examiner is respectfully requested to reconsider his rejection in view of the above amendments and the following remarks.

Claims 10-14 stand rejected under 35USC112 second paragraph. Claim 10 is amended to remove the grounds for this rejection.

The Invention

In independent claim 1, as amended, there are a communication means and an identification means, which are separate from one another. In embodiments of the present invention, information provided by the identification means is used to establish communication between the communication means and a second device. Embodiments of the present invention thus ensure that a correct portable communications device is connected to a second device where, for example, there may be a large number of second devices and a large number of portable communications

devices in close proximity. It is important that the right second device is connected to the right portable communications device, for example, in the case where communication is established in order to conduct a financial transaction between two parties. The identification means allows the second device, such as a point of sale device, ATM, or the like to be establish a wireless communication connection to a portable communications device, such as a mobile telephone.

Discussion of the Cited Reference

The Examiner has cited the reference Altshul in support of the rejection based on anticipation. Altschul describes a wireless telephone with credited airtime. A pre-paid mobile phone is described, having a magnetic strip (48) attached thereto, similar to that of a credit card. The telephone (10) may be used in a manner similar to currently available credit cards to identify the user's credit card account and make a credit card purchase (column 4, lines 53-55). As an incentive to use the telephone (10) for such purposes is converted into additional periods of airtime, during which telephonic communication is enabled (column 4, lines 63-66). Once a purchase is made, the user may communicate telephonically with a central computer (110) for the telephone network to confirm airtime credits based on a purchase. The identification code of Altshul is identical to credit card information. After a purchase is complete, the user uses the keypad (30) as an input means to enter: and input code to access the computer (110); the user's credit card account number; and any further identifying code such as a pin, purchase amount or

transaction information number. The computer (110) then compares the purchase amount entered by the user to the debited purchase amount entered into the account when the purchase was made and, if the values are the same, will generate a confirmation signal which is transmitted telephonically to a confirmation means (120) (column 5, lines 4-17). There is no wireless communication that occurs at the point of sale.

The information entered by the user into the keypad (30) is not used to establish a communications link between the telephone (10) and a central computer (110), telephonically or otherwise. Further, the information contained within the magnetic strip (48) is used to perform a standard credit card transaction and not to establish communication between the telephone (10) and the central computer (110). Accordingly, this document does not describe a portable communications device comprising a communication means and a separate identification means, wherein information provided by the identification means is used to establish communication between the communication means and a second device.

The apparatus described in Altschul does not relate to a system wherein a wireless communication network is used to conduct a financial transaction as described in embodiments of the present invention. Embodiments of the present invention provide a system for ensuring that a correct communication link is established between a portable communications device and a second device in an environment where there are a plurality of devices within communication range. It is thus submitted that the present invention

provides a non-obvious solution to the problem of ensuring the correct portable communications device is connected to the appropriate second device.

The Issue of Anticipation

It is well settled that a claim is anticipated, "only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (See CHISOLM, Federal Circuit Guide, Pg. 1221).

"...it must be shown that the reference contains all of the elements of the claims apart from irrelevant or merely extraneous variations, and the elements are arranged in the same way to achieve the same result which is asserted to be an inventive function..." 454 U.S. 1129 (1981)

The elements of the claim and their function and purpose within the claim must be reviewed in a manner similar to an infringement analysis. If the device described in the cited reference would not infringe if it was later, it will not anticipate if the reference is earlier.

Applying this standard to the system of the reference Altshul, it becomes clear that the system of Altshul is missing significant elements of independent claims 1 and 7. There is no provision for establishing wireless communication at a point of sale device through the use of a machine readable code. Claim 1 states:

"wherein said information from said identification means is obtainable by said second device, and in use, is used to establish communication between said communication means and said second device."

Equivalent language also is contained in independent claims 16, and 17. Since these elements form no part of the system of Altshul, there would be no infringement, if Altshul was later, therefore, the cited reference Altshul does not support the rejection based on anticipation. The above arguments are equally applicable to the rejected dependent claims 6-15, 18 and 19.

With respect to the rejections of claims 2-4 and 5 based on obviousness, the Examiner's characterization of the system Altshul is not supported by the disclosure of Altshul for the reasons stated above. Since the obviousness rejections rely primarily on the cited reference Altshul, they are not supported by any of the combined teachings suggested by the Examiner.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,

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